

Part IV – Items of General Interest

Amounts Paid by Suffolk County, New York, to Residents for Septic System Upgrades

Announcement 2022-26

This announcement notifies taxpayers that payments made by the County of Suffolk in the State of New York (Suffolk County) to residential property owners in Suffolk County under Suffolk County's Septic Improvement Program (SIP Program) are not included in the gross income of those property owners for Federal income tax purposes.

In addition, because the SIP Program payments to Suffolk County residents are not includible in the gross income of the recipients, Suffolk County does not have an information reporting obligation for the payments made to residential property owners in Suffolk County under the SIP Program.

Suffolk County is experiencing degraded water quality as a result of excess nitrogen and nitrogen pollution, the primary cause of which is cesspools and conventional septic systems. The New York State Department of Environmental Conservation and the U.S. Environmental Protection Agency have both determined that the Long Island Sound, the South Shore Estuary, and the Peconic Estuary are impaired bodies of water due to excess nitrogen pollution. Excess nitrogen and nitrogen pollution have contributed to beach closures, restrictions on shell fishing, toxic algae blooms, and

massive fish kills within Suffolk County.

To address the adverse effects of nitrogen pollution from cesspools and septic systems, Suffolk County established the SIP Program pursuant to Suffolk County Local Law 15-2017 to encourage residents to upgrade their existing cesspools and septic systems to Innovative and Alternative On-site Wastewater Treatment Systems (I/A OWT systems). I/A OWT systems are designed to reduce the nitrogen contamination affecting Suffolk County's watershed.

As part of the SIP Program, Suffolk County provides payments to qualified residential property owners in Suffolk County who must use the payments for the installation and maintenance of I/A OWT systems on their residential properties. Among other requirements to qualify for a payment under the SIP Program, a residential property owner's home must be a single family, owner-occupied, year-round primary residence of the owner, not a rental property, and not a property in which an in-home business is located.

Section 126(a) of the Internal Revenue Code (Code) provides that gross income does not include the excludable portions of payments received under the programs specified in § 126(a)(1) through (a)(8). Section 126(a)(8) includes, in part, any program of a State or a political subdivision of a State under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

Under § 126(b)(1) of the Code, the amount of the "excludable portion" of a payment that is excluded from a recipient's gross income is that portion of the payment made to any person under a program described in § 126(a) that is determined—

(A) by the Secretary of Agriculture to be primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife and

(B) by the Secretary of the Treasury or her delegate as not increasing substantially the annual income derived from the property.

Further, § 126(b)(2) provides that the term “excludable portion” does not include that portion of any payment allowable as a deduction in the taxable year the amount is paid or incurred.

On November 16, 2022, the Natural Resources Conservation Service of the U.S. Department of Agriculture provided public notice that the Secretary of Agriculture has determined that the SIP Program payments are primarily for the purpose of conserving soil and water resources and protecting or restoring the environment. See [*Determination of the Primary Purpose of the New York Suffolk County Septic Improvement Program \(SIP\)*](#), 87 FR 68669 (Nov. 16, 2022). Consequently, the SIP Program payments meet the requirements of § 126(b)(1)(A) of the Code. In addition, because the SIP Program payments are made only in connection with property that is the primary residence of the owner, not a rental property, and not a property in which an in-home business is located, no income is derived from properties on which an I/A OWT system will be installed using funds provided by Suffolk County under the SIP Program. Accordingly, this announcement confirms that the SIP Program payments do not increase substantially the annual income derived from the property within the meaning of § 126(b)(1)(B). Finally, § 126(b)(2) does not operate to reduce the excludable portion of any SIP Program payment because no portion of the payment is allowable to Suffolk

County as a deduction in the taxable year the amount is paid or incurred by Suffolk County.

Because the requirements of § 126(a) of the Code are met for Suffolk County's payments under the SIP Program, the payments are not included in the gross income of the payment recipients for Federal income tax purposes. In addition, Suffolk County does not have an information reporting obligation under § 6041 with respect to the payments under the SIP Program.

Payments under the SIP Program have been ongoing and, therefore, some payment recipients may have reported the payments as gross income on their Federal income tax return for the year or years they received the payment(s). If so, those individuals should file an amended return [Form 1040 X](#) for the year or years in which they reported the income and decrease their adjusted gross income by the appropriate amount. The Explanation of Changes on Form 1040-X should refer to Announcement 2022-26. Generally, § 6511(a) of the Code requires that amended returns claiming a refund of tax must be filed within 3 years from the date of filing the original return or within 2 years from the time the tax was paid, whichever is later. Individuals can file Form 1040-X electronically with tax filing software to amend 2019 or later Forms 1040 or 1040-SR. See [IRS.gov/Filing/Amended-Return-Frequently-Asked-Questions](https://www.irs.gov/Filing/Amended-Return-Frequently-Asked-Questions) for more information.

For further information concerning this announcement, contact the Office of Associate Chief Counsel, Passthroughs and Special Industries, Branch 6 at (202) 317-6853 (not a toll-free number).